

REMARKS

The Applicant appreciates the courteous and complete examination of the application by the Examiner. In view of the foregoing amendments and the following remarks, a reconsideration of the instant application is respectfully requested.

The Examiner objects to the specification under 37 CFR 1.71, as failing to provide an adequate written description of the invention and failing to adequately teach how to make and/or use the invention. The Applicant respectfully submits a substitute specification and abstract of the disclosure which overcomes the objection. No new matter was entered, and the substitute specification is fully supported by the original specification and drawings.

The Applicant also submits replacement drawing sheets. The replacement drawings sheets only makes changes to the element numbers so as to correspond to the substitute specification and to the claims.

The Examiner objects to claims 1-5 under 35 U.S.C. 112, first paragraph. Additionally, the Examiner rejects to claims 1-5 under 35 U.S.C. 112, second paragraph, rejects to claim 5 under 35 U.S.C. 102(b) as being anticipated by Enzu, and rejects to claims 1-5 under 35 U.S.C. 103(a) as being unpatentable over Hollingsworth et al. in view of Enzu.

In order to expedite the prosecution of this application, claims 1-5 have been canceled without prejudice or disclaimer of the subject matter thereof. Claims 6-25 have been added to more completely cover certain aspects of the Applicant's invention. Claims 6-25 are now in this application.

The Applicant appreciates the thoroughness in the Examiners search and in locating references directed to cases having springs. However, it can be appreciated that the newly added claims are substantially different to the prior art references relied upon and located by the Examiner. Independent claims 6, 17, and 25 of the present application includes crossing plates that create a mesh, located in both the top and bottom parts. The meshes are cushioned by springs, and covered by an interior lining. The Enzu or the Hollingsworth references disclose, or suggest the combination of top and bottom plates each having meshes created by crossing plates and cushioned by springs. The Applicant respectfully disagrees with the Examiner's statement of "Enzu

further teaches in the embodiment of Figures 16-17 that the insert (1, 16) comprising a bag (11, 111) having a plurality of air vents which is considered equivalent to a mesh as claimed.” It can be appreciated that the air vents (162) are randomly positioned holes in the flexible sheet (161) [see Figure 16, and col. 5 line 65], and not a mesh created by crossing plates with the interior lining covering the mesh, as claimed in the present application.

Claims 7-16 are felt to patentably distinguish over the prior art references because of their above-mentioned dependency from claim 6, and claims 18-24 are felt to patentably distinguish over the prior art references because of their above-mentioned dependency from claim 17.

Moreover, the law is clear that a motivation must be provided by the prior art to make the allegedly obvious combinations of parts relied upon in making an obviousness rejection.

Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. See, e.g., *C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 140, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998).

And, absent such a showing of motivation in the prior art to make the allegedly obvious combination, it can only be assumed that the applicant's disclosure has provided the motivation for making the combination of elements from the prior art, and not the prior art itself.

Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability -- the essence of hindsight. See e.g., *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985).

It is therefore submitted that the combination of individual parts taught by the various prior art references relied upon in the Office Action would not motivate one skilled in the art to arrive at the applicant's claimed invention.

The Applicant requests that the Examiner reconsiders his rejections of the invention in view of the well established principle that small differences in a crowded art

can constitute patentable improvement. See *In re Baum*, 51 USPQ 470 (CCPA 1941) and *In re Lange*, 126 USPQ 365 (CCPA 1960). In considering this principle, the Applicant would also request that the Examiner take note to the court decision which notes that "apparent simplicity has been held to furnish strong argument for patentability where, as here, a need has existed for a structure of the nature disclosed and claimed. The fact that a solution to a problem is simple, or appears to be simple when viewed in retrospect, does not mean that the solution was obvious when it was conceived." See *Ellipse corp. v. Ford Motor Co.*, 171 USPQ 513.

With the above amendments being fully responsive to all outstanding rejections and formal requirements, it is respectfully submitted that the claims are now in condition for allowance, and a notice to that effect is earnestly solicited. Should the Examiner feel that there are further issues which might be resolved by means of telephone interview, the Examiner is cordially invited to telephone the undersigned at (403) 444-5695, or email at davidguerra@verizon.net.

No additional fee is due.

Respectfully Submitted,

A handwritten signature in cursive script that reads "David A. Guerra".

David A. Guerra, Reg. 46,443

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

On (Date) 12/08/2006 by David A. Guerra 